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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
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9 JAMELLE L. RUSSELL,

10 Plaintiff,

11 vs.

12 WASHOE COUNTY DETENTION
13 FACILITY, *et al.*,

14 Defendants.

3:17-cv-00181-MMD-WGC

ORDER

Re: ECF No. 20

15 Before the court is Plaintiff's Motion for the Appointment of Counsel. (ECF No. 20.) Plaintiff
16 bases his motion on (1) the fact he is unable to afford counsel, (2) that the substantive issues and
17 procedural matters in this case are too complex for Plaintiff's comprehension and abilities, and (3) that
18 his incarceration will greatly limit his ability to effectively litigate his case. (*Id.* at 1, 2.)

19 A litigant in a civil rights action does not have a Sixth Amendment right to appointed counsel.
20 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts
21 are empowered to request an attorney to represent an indigent civil litigant. The circumstances in which
22 a court will grant such a request, however, are exceedingly rare, and the court will grant the request
23 under only extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800
24 (9th Cir. 1986); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

25 A finding of such exceptional or extraordinary circumstances requires that the court evaluate both
26 the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to articulate his claims
27 in light of the complexity of the legal issues involved. Neither factor is controlling; both must be viewed
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1 together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991), *citing Wilborn*,
2 *supra*, 789 F.2d at 1331. Plaintiff has shown an ability to articulate his claims. (ECF Nos. 1, 11, 12.)

3 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

4 If all that was required to establish successfully the complexity of the
5 relevant issues was a demonstration of the need for development of
6 further facts, practically all cases would involve complex legal issues.
7 Thus, although *Wilborn* may have found it difficult to articulate his
8 claims *pro se*, he has neither demonstrated a likelihood of success on the
9 merits nor shown that the complexity of the issues involved was
10 sufficient to require designation of counsel.

11 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying the
12 request for appointment of counsel because the Plaintiff failed to establish the case was complex as to
13 facts or law. 789 F.2d at 1331.

14 The substantive claim involved in this action is not unduly complex. Plaintiff's Complaint was
15 allowed to proceed solely on an excessive force claim against Defendants Shearer, Zmak, Whitmore,
16 and Beard. (ECF No. 3 at 9.)

17 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of the
18 likelihood of success on the merits of his claims.

19 As discussed above, Plaintiff states that as a *pro se* inmate, he is hampered by his inability to
20 investigate the claims and defenses, pursue depositions, interview witnesses, etc. While any *pro se*
21 inmate such as Mr. Russell would likely benefit from services of counsel, that is not the standard this
22 court must employ in determining whether counsel should be appointed. *Wood v. Housewright*, 900 F.2d
23 1332, 1335-1336 (9th Cir. 1990).

24 The United States Supreme Court has generally stated that although Congress provided relief for
25 violation of one's civil rights under 42 U.S.C. § 1983, the right to access to the courts is only a right to
26 bring complaints to federal court and not a right to discover such claims or to litigate them effectively
27 once filed with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).


28 The Court does not have the power "to make coercive appointments of counsel." *Mallard v. U. S.*
Dist. Ct., 490 US 296, 310 (1989). Thus, the Court can appoint counsel only under exceptional
circumstances. *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) [cert den 130 S.Ct. 1282 (2010)].
Plaintiff has not shown that the exceptional circumstances necessary for appointment of counsel are

1 present in this case.

2 In the exercise of the court's discretion, it **DENIES** Plaintiff's motion (ECF No. 20).

3 **IT IS SO ORDERED.**

4 DATED: November 8, 2018.

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7 WILLIAM G. COBB
8 UNITED STATES MAGISTRATE JUDGE
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